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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEX EYE BURSCH,

Defendant.

No. CR 11-0644 PJH

JOINT STIPULATIONS AND WAIVERS  
FOR BENCH TRIAL

The parties hereby submit the following waiver and stipulations in anticipation of the bench trial currently set before this Court on August 29, 2012.

**I. WAIVER OF RIGHTS**

1. Pursuant to Federal Rule of Criminal Procedure 23, the defendant, Alex Eye Bursch, waives his right to a jury trial and the government consents to have the Court conduct the trial in this case.

2. Defendant Bursch waives his right to testify and to call any witnesses on his own behalf, and he submits the matter for decision by the Court based on the factual stipulations below.

STIPULATIONS FOR TRIAL  
No. CR 11-0644 PJH

## II. FACTUAL STIPULATIONS<sup>1</sup>

If called to testify at trial each of the witnesses named below would testify as follows:

1. Deputy Xavier Shabazz: Deputy Shabazz was a Deputy Sheriff with the Contra Costa County Sheriff's Office at the time of this investigation, whose primary duties involved investigating sex-related crimes. On September 1, 2010, Deputy Shabazz and Sheriff's Detective Scott Sutherland executed a search warrant at the home of Defendant Alex Eye Bursch at 5016 Wagon Wheel Way, Antioch, California. The search warrant authorized law enforcement officers to search for evidence of child pornography, including computers and electronic media. Deputy Shabazz confirmed that Defendant Bursch listed 5016 Wagon Wheel Way as his home address on his driver's license, and that Bursch subscribed to an SBC Internet Services account for internet service at the Wagon Wheel Way address. No one was at home at the time the search warrant was executed. The search revealed an Antech computer tower in the bedroom containing the following hard drives: a Western Digital hard drive bearing serial number WCAU44515023, a Samsung hard drive bearing serial number S07GJ10Y610408, and a Western Digital hard drive bearing serial number WXL708051660. In a closet, deputies found an HP Pavillion laptop computer bearing serial number TW21906555, and a Maxtor hard drive bearing serial number TC04RPHM. These computers and hard drives were all seized

Deputy Shabazz spoke with a neighbor, Caroline Uribe, who confirmed that Bursch lived alone in the residence where the search warrant was executed.

Deputy Shabazz interviewed Bursch at his workplace, Los Medanos Elementary School, the same day as the search. Bursch voluntarily waived his *Miranda* rights and told Deputy

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<sup>1</sup> The parties agree to a bench trial and stipulate to the facts as detailed below. The parties enter these stipulations with the express understanding that the defendant objects to the introduction of any evidence obtained as a result of the September 1, 2010, search and the fruits of that search, on the basis of his belief that they were seized in violation of the Fourth Amendment. The government and the defendant agree that by entering into these stipulations, the defendant is not rendering moot his right to appeal the denial of his motions to suppress. *United States v. Larson*, 302 F.3d 1016, 1020 (9<sup>th</sup> Cir. 2002) (stating that appeal after a bench trial by stipulated facts not moot if the stipulations merely describe evidence the government intended to introduce at trial). The defendant does not waive his objection to the introduction of that evidence by entering into the following stipulations.

1 Shabazz that he had recently begun using a file-sharing program to search for child pornography,  
2 and that he tended to view child pornography featuring girls between the ages of “[s]ort of eight  
3 to fourteenish.” Bursch stated that the last time he had viewed child pornography was the week  
4 before the execution of the search warrant. Bursch confirmed that the seized computers belonged  
5 to him.

6 2. Computer Forensic Detective Scott Sutherland: Detective Scott Sutherland is a  
7 Deputy Sheriff with the Contra Costa County Sheriff’s Office, who has received specialized  
8 training, has attended training seminars, and has gained practical experience in the forensic  
9 examination of computers and other electronic media to recover evidence, including child  
10 pornography. Detective Sutherland participated in the execution of the search warrant at  
11 Defendant Bursch’s home on September 1, 2010. Detective Sutherland performed an initial  
12 review of the computer hard drives located at Bursch’s home, and found that they contained  
13 images and videos of girls ranging in age from five to ten years engaged in sexual acts with adult  
14 males, such as performing oral copulation with an adult man’s penis, or engaging in vaginal  
15 sexual intercourse with adult males.

16 Detective Sutherland later performed a more thorough forensic examination of these  
17 computer hard drives. Three of the hard drives were stored inside an Antech computer tower.  
18 One of these hard drives, a Western Digital hard drive bearing serial number WXL708051660,  
19 contained the computer’s operating system as well as documents belonging to Alex Bursch, such  
20 as a California Basic Education Skills Test card bearing Bursch’s name, and a letter signed by  
21 Bursch to the Davis Unified School District. One folder, labeled “Alex’s Pictures,” contained  
22 non-pornographic photographs of children at swimming events. All of the hard drives in the  
23 Antech computer tower contained images and videos of real children, including prepubescent  
24 children, engaging in sexual activities with adults, such as performing oral copulation with an  
25 adult man’s penis, or engaging in vaginal sexual intercourse with adult males.

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3. The parties stipulate that all of the hard drives found in the Antech computer tower were manufactured outside California and contained images and videos of minors who are real human beings.

IT IS SO STIPULATED.

DATED: 8/29/12

MELINDA HAAG  
United States Attorney

OWEN P. MARTIKAN  
Assistant United States Attorney

DATED: 8/29/12

Alex Bursch  
ALEX EYE BURSCH  
Defendant

DATED: 29 Aug 12

ANNE C. BELES  
Attorney for Alex Eye Bursch